

EXHIBIT E

1

2 UNITED STATES DISTRICT COURT EASTERN
3 DISTRICT OF NEW YORK

4 -----X

5 LASHAWN BURGESS,

6

PLAINTIFF,

7

-against-

15 CV 5525

8

(RRM) (MDG)

9

10 CITY OF NEW YORK, VINCENT AGOSTINO,
11 Individually, MICHAEL DICECCO,
12 Individually, and RICKY ALEXANDER,
13 Individually,

14

DEFENDANTS.

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15

DATE: June 21, 2016

16

TIME: 1:25 P.M.

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EXAMINATION BEFORE TRIAL of the

20

Defendant, SERGEANT MICHAEL DICECCO,

21

b/s/h/a, MICHAEL DICECCO, taken by the

22

Plaintiff, pursuant to a Court Order, held

23

at the offices of New York City Law

24

Department, 100 Church Street, New York,

25

New York 10007, before Quintina Haskins, a

Notary Public of the State of New York.

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27

28

1 SGT. M. DICECCO

2 that or are you just speculating?

3 A. I'm sure it was cold.

4 Q. And you drove to the
5 intersection of Church and Park?

6 A. Correct.

7 Q. Did you have any radio
8 communication with anybody prior to
9 arriving at Church and Park?

10 A. No.

11 Q. When you arrived at Park around
12 Church, who did you first observe?

13 A. I observed two males standing
14 on the corner of Park and Church.

15 Q. Were there any other civilians
16 in the area?

17 A. No.

18 Q. Did you speak to anybody else
19 besides the two arrestees at Church and
20 Park?

21 A. No.

22 Q. How far away from these two
23 individuals were you when you first
24 observed them?

25 A. Between 20 and 50 feet.

1 SGT. M. DICECCO

2 Q. And you were inside the car at
3 that time?

4 A. Correct.

5 Q. And were Officer Alexander and
6 Agostino also in the car at that time?

7 A. Yes.

8 Q. And did you have anything to
9 enhance your ability to, you know, view the
10 scene like binoculars or anything like
11 that?

12 A. No.

13 Q. When you first observed
14 Mr. Burgess was with another person?

15 A. Yes.

16 Q. And you later came to find out
17 that person was Leroy Miller?

18 A. Correct.

19 Q. What was the lighting like at
20 Church and Park?

21 A. There was a streetlight on the
22 corner.

23 Q. A single streetlight?

24 A. It's actually -- there is an
25 overpass that has lighting underneath it.

1 SGT. M. DICECCO

2 Q. Were they under the overpass?

3 A. Yes.

4 Q. How long did you observe
5 Mr. Miller and Mr. Burgess before this
6 alleged exchange took place?

7 A. Very short time, a few seconds.

8 Q. Do you remember what
9 Mr. Burgess was wearing?

10 A. Not in particular.

11 Q. How about Mr. Miller?

12 A. Not particularly.

13 Q. Do you remember if either one
14 of them were wearing gloves?

15 A. Yes.

16 Q. Who was wearing gloves?

17 A. Leroy Miller had gloves on.

18 Q. How far was Mr. Burgess from
19 Mr. Miller when you first observed them?

20 A. My first observation, they were
21 making contact.

22 Q. When you say they were making
23 contact, were they facing each other?

24 A. Yes.

25 Q. Were their backs to you?

1 SGT. M. DICECCO

2 A. No.

3 Q. So what was your perspective of
4 Mr. Miller and Mr. Burgess?

5 A. My perspective was I saw the
6 both of their sides. I saw the left side
7 of Mr. Burgess, and I saw the right side of
8 Mr. Miller.

9 Q. And what hand did Mr. Burgess
10 use to you hand this object to Mr. Miller?

11 A. Right.

12 Q. His right hand. And what hand
13 did Mr. Miller use to receive that object?

14 A. Right.

15 Q. You yourself observed this
16 transaction?

17 A. Correct.

18 Q. Now, where was Officer Agostino
19 seated in the vehicle?

20 A. From my recollection, he was
21 sitting in the front passenger seat.

22 Q. And Officer Alexander?

23 A. Rear passenger seat, rear
24 passenger side.

25 Q. And could you describe how Mr.

1 SGT. M. DICECCO

2 Miller was holding the U.S. currency when
3 he handed it to Mr. Burgess?

4 A. In between his index and thumb.

5 Q. Were the bills flat out in
6 front or were they folded?

7 A. Folded.

8 Q. And you could tell from 50 feet
9 away that it was U.S. currency?

10 A. Yes.

11 Q. Could you see if it was a
12 single bill or multiple bills?

13 A. No.

14 Q. Did you have any contact with
15 Leroy Miller prior to February 28th, 2014?

16 A. Yes.

17 Q. What was that contact?

18 A. I had stopped him prior to that
19 incident in front of his residence.

20 Q. Do you know how long prior to
21 the incident it was?

22 A. No, I do not recollect that.

23 Q. For what reason did you stop
24 him?

25 A. I actually believe we actually

1 SGT. M. DICECCO

2 arrested Mr. Miller prior to that.

3 Q. Do you remember what you
4 arrested him for?

5 A. Narcotics.

6 Q. Was he buying or selling?

7 A. Just possession.

8 Q. Did you ever have a discussion
9 with Leroy Miller about providing you with
10 information regarding drug activity in the
11 area that you patrolled?

12 A. Yes.

13 Q. And did he agree to provide you
14 with information?

15 A. No.

16 Q. So he never provided you with
17 any information?

18 A. No.

19 Q. Did you make him that offer in
20 exchange for anything?

21 A. No, it's a standard. We
22 debrief all prisoners.

23 Q. Did you have any contact with
24 Mr. Burgess prior to February 28th, 2014?

25 A. No.

1 SGT. M. DICECCO

2 Q. So you observed this hand-to-
3 hand between Mr. Miller and Mr. Burgess?

4 A. Yes.

5 Q. You were seated in the vehicle
6 when you made that observation?

7 A. Yes.

8 Q. After you made that
9 observation, what if anything did you do?

10 A. We exited the vehicle and
11 approached the two males.

12 Q. All three of you?

13 A. All three of us.

14 Q. And do you remember who got out
15 of the car first?

16 A. We got out of the car
17 simultaneously.

18 Q. And you approached the two of
19 them on foot?

20 A. Correct.

21 Q. How far was the vehicle from
22 Mr. Miller and Mr. Burgess when you exited
23 your vehicle?

24 A. About 15 feet approximately.

25 Q. So you had moved the vehicle

1 SGT. M. DICECCO

2 from your prior observation?

3 A. Correct.

4 Q. I'm sorry, from when you
5 initially observed them?

6 A. Yes.

7 Q. Did you search Mr. Miller at
8 the scene?

9 A. Yes.

10 Q. Did you personally search Mr.
11 Miller at the scene?

12 A. No.

13 Q. Do you recall who searched him?

14 A. P.O. Alexander.

15 Q. How about Mr. Burgess, did you
16 search Mr. Burgess?

17 A. No.

18 Q. Do you remember who searched
19 Mr. Burgess?

20 A. P.O. Agostino.

21 Q. And what if anything was
22 recovered from Leroy Miller?

23 A. From Leroy Miller was recovered
24 two glassines of alleged crack cocaine.

25 Q. And from where on Mr. Miller's

1 SGT. M. DICECCO

2 Q. And Police Officer Agostino was
3 assigned to be the arresting officer?

4 A. Yes.

5 Q. And why is that?

6 A. He took the arrest. Either
7 officer could take the arrest if they both
8 observed it. That night, Officer Agostino
9 took the arrest.

10 Q. Was that just a matter of
11 course or was it his turn, he was up for
12 the next arrest or?

13 A. I can't say exactly why he took
14 it. He was the assigned officer.

15 Q. Was that your responsibility to
16 assign either one of those officers as the
17 arresting officer?

18 A. Yes.

19 Q. Or you could have been the
20 arresting officer had you chosen to be?

21 A. No.

22 Q. It would have to be one of your
23 subordinates?

24 A. Legally, I could have taken the
25 arrest. It's just not the way we do it in

1 SGT. M. DICECCO

2 the police department. The arresting
3 officer is usually a police officer or
4 detective.

5 Q. Were you involved in the arrest
6 processing procedure?

7 A. No.

8 Q. Did you review any of the
9 paperwork?

10 A. Yes.

11 Q. So you were involved, to that
12 extent?

13 A. I don't fill out any of the
14 paperwork, I just signed -- I make sure
15 everything is accurate and I sign the
16 paperwork.

17 Q. Did you discuss the charges
18 with Officer Agostino before the paperwork
19 was generated?

20 A. I'm thinking about that. I did
21 -- I did discuss it with him, yes.

22 Q. And what determination did you
23 come to?

24 A. After we made the arrest, we
25 discussed exactly what the charge is going

1 SGT. M. DICECCO

2 to be that would accurately describe the
3 crime that was committed.

4 Q. Did you charge him with more
5 than one offense?

6 A. Yes.

7 Q. Do you recall what you charged
8 him with?

9 A. Yes.

10 Q. What did you charge him with?

11 A. Which defendant -- which
12 person?

13 Q. I'm sorry, Mr. Burgess.

14 A. Mr. Burgess was charged with
15 criminal possession of a controlled
16 substance with an intent to sell, and
17 criminal possession of a controlled
18 substance.

19 Q. Did you receive any overtime as
20 a result of this arrest?

21 MS. ARIBAKAN: Objection.

22 A. No.

23 Q. How much overtime did you
24 receive in 2013 and 2014?

25 MS. ARIBAKAN: Objection.

1 SGT. M. DICECCO

2 A. I don't have an exact number
3 for that.

4 Q. At what precinct did the arrest
5 processing take place?

6 A. The 121 Precinct.

7 Q. Now, Mr. Burgess was also
8 searched at the scene?

9 A. Yes.

10 Q. And do you remember what was
11 recovered from him?

12 A. Yes.

13 Q. What was recovered from
14 Mr. Burgess?

15 A. U.S. currency, two ten-dollar
16 bills.

17 Q. Just two ten-dollar bills?

18 A. Yes.

19 Q. No additional currency?

20 A. No.

21 Q. Anything else recovered from
22 Mr. Burgess that you can recall?

23 A. No.

24 Q. Did you transport Mr. Miller or
25 Mr. Burgess back to the 121 Precinct?

1 SGT. M. DICECCO

2 Avenue or Church Street -- Church Avenue?

3 MR. DONLON: Do you have a copy
4 of the arrest report?

5 Q. On Church Street you had your
6 lights on when you were driving down Church
7 Street?

8 A. Headlights, I had on.

9 Q. And do you remember how fast
10 you were going?

11 A. I do not remember how fast.

12 Q. Were you moving when you first
13 observed Mr. Burgess and Mr. Miller?

14 A. Yes.

15 Q. And then you stopped?

16 A. I never stopped the vehicle
17 until I was about to exit vehicle.

18 Q. So, the observation that you
19 made of them, this transaction, you were
20 moving when you made that observation?

21 A. At a very slow speed. I was
22 coming from the intersection, I observed
23 them, yes.

24 Q. From what direction were you
25 coming?